

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MARY NOLAN

Plaintiff,

v.

BLUE CROSS AND BLUE SHIELD
OF MASSACHUSETTS, INC.

Defendant.

CIVIL ACTION
NO. 04-10944-RGS

BLUE CROSS' MOTION TO DISMISS AND REQUEST FOR HEARING

Defendant Blue Cross and Blue Shield of Massachusetts, Inc. (“Blue Cross”) hereby moves to dismiss all claims against it in the Complaint filed by plaintiff Mary Nolan. As grounds therefor, Blue Cross states that:

(1) The Complaint alleges breach of contract. Ms. Nolan claims that Blue Cross' alleged termination of health insurance benefits received through her now deceased, former husband's employer is a breach of contract. Complaint, ¶¶ 8, 24. The relationship between Ms. Nolan and Blue Cross, however, exists only by virtue of an employee welfare benefit plan established and maintained by Ms. Nolan's former husband's employer. Ms. Nolan's claim, which cannot be resolved without referring to and construing the terms of an ERISA plan, is completely preempted by the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. 1001, et seq.; see Turner v. Fallon Community Health Plan,

Inc., 127 F.3d 196, 198-200 (1st Cir. 1997) cert. denied 523 U.S. 1072, 118 S.Ct. 1512 (1998), and, therefore, should be dismissed.

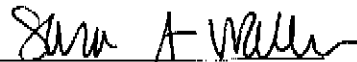
(2) In further support of this motion, Blue Cross relies on the arguments in its supporting memorandum, filed herewith.

REQUEST FOR ORAL ARGUMENT

(3) Blue Cross respectfully requests a hearing for oral argument on this motion.

Wherefore, the Court should dismiss the complaint against Blue Cross.

By Its Attorneys,



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Rule 7.1 Certificate

Undersigned counsel states that counsel have conferred and have attempted in good faith to resolve or narrow the issue addressed in this motion.



Sara A. Walker

Dated: May 21, 2004

CERTIFICATE OF SERVICE

I certify on this date a true copy of this document was served on the attorney of record for each party by mail by hand - and within the time permitted by the court's rules.

Dated: 5/21/04 

CERTIFICATE OF SERVICE
I certify on this date a true copy of this document was served on the attorney of record for each party by mail by hand - and within the time permitted by the court's rules.

Dated: _____